UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

ACADEMY OF MOTION PICTURES ARTS AND SCIENCES, a California non-profit corporation,

Plaintiff,

v.

AMPAS.COM, an Internet domain name,

Defendant.

Civil Action No. 1:07-cv-356-LMB-LO

DECLARATION OF SCOTT MILLER IN SUPPORT OF PLAINTIFF'S MOTION FOR A DEFAULT JUDGMENT TRANSFERRING <AMPAS.COM> TO PLAINTIFF

I, Scott Miller, hereby declare:

1. I am Assistant General Counsel for Plaintiff ACADEMY OF MOTION PICTURES ARTS AND SCIENCES ("A.M.P.A.S.") and submit this declaration in support of Plaintiff's Motion for a Default Judgment Transferring <ampas.com> to Plaintiff. The statements made in this declaration are based on my personal knowledge, and if called as a witness, I could testify competently to these matters.

I. A.M.P.A.S. and Its Trademark Rights

2. A.M.P.A.S. was founded in 1927 by a now-legendary group of thirty-six film industry leaders, who numbered among them Cecil B. DeMille, Mary Pickford, Jack Warner and Douglas Fairbanks, for the purposes, *inter alia*, of advancing motion picture arts and sciences and promoting cultural, educational and technological progress by fostering cooperation among the motion picture industries creative leadership. As a constant incentive for members of the industry to strive to achieve those purposes, and as a means of recognizing persons who make outstanding contributions in their respective creative fields, A.M.P.A.S. holds its annual

Dockets.Justia.com

ACADEMY AWARDS® ceremony where it confers an "Award of Merit," known to the public as an "Oscar," in over twenty (20) categories of achievement.

3. When the first Academy Awards were handed out on May 16, 1929, movies had just begun to talk. A.M.P.A.S. instituted its famous sealed-envelope system in 1941 and first televised its ceremony on March 19, 1953. Since then, the ACADEMY AWARDS® ceremony has grown into a nationally and internationally televised event. Each year, A.M.P.A.S.'s ceremony is seen in a live or delayed broadcast in over two hundred countries and territories, including the People's Republic of China, where it was first televised in 1990. An award category for foreign films has been included since 1948 and motion pictures from China have been nominated for this and other categories.

4. The A.M.P.A.S.®, ACADEMY AWARD®, and ACADEMY AWARDS® marks have come to symbolize the most outstanding achievements in motion picture-making. As a result of the long and continuous use of its A.M.P.A.S.®, ACADEMY AWARD®, and ACADEMY AWARDS® marks in conjunction with its products and services, A.M.P.A.S. has gained valuable goodwill and a strong customer recognition in these trademarks throughout the world. To protect these valuable rights, A.M.P.A.S. has obtained a federal trademark registration for its A.M.P.A.S.®, ACADEMY AWARD®, and ACADEMY AWARDS® marks.

5. As reflected below, A.M.P.A.S. registered with the United States Patent and Trademark Office its A.M.P.A.S.® trademark pursuant to Certificate of Registration No. 2166918 (registration date June 23, 1998); its ACADEMY AWARD® trademark pursuant to Certificate of Registration No. 2245965 (registration date May 18, 1999); and its ACADEMY AWARDS® trademark pursuant to Certificate of Registration Nos. 1103859 (registration date October 10, 1978), 1880473 (registration date February 28, 1995), 1956313 (registration date February 13, 1996):

Country of Registration	Mark	Reg. # / Date	Class	Goods/Services
United States	A.M.P.A.S.	2166918/ 6/23/1998	I 41	Educational and entertainment services rendered through the medium of an annual live television program in the field of motion pictures and award ceremonies.
United States	A.M.P.A.S.	2166918/ 6/23/1998	I 16	Series of nonfiction books, pamphlets and informational brochures issued from time to time relating to motion pictures and awards ceremonies.
United States	A.M.P.A.S.	2166918/ 6/23/1998	I 09	Pre-recorded video tapes and CD-ROMs featuring entertainment relating to motion pictures and award ceremonies
United States	ACADEMY AWARD	2245965 5/18/1999	I 41	Entertainment services, namely, an annual award program for presentation of awards in recognition of distinguished achievement in the motion picture industry; educational services, namely, providing incentives to persons to demonstrate excellence in the field of motion pictures through the issuance of awards.
United States	ACADEMY AWARDS	1103859 10/10/1978	I 16	Books, pamphlets, brochures and press kits issued from time to time.
United States	ACADEMY AWARDS	1103859 10/10/1978	I 41	Educational and entertainment services rendered through the medium of an annual live, television program dealing with motion pictures.
United States	ACADEMY AWARDS	1880473 2/28/95	I 09	Pre-recorded video tapes featuring entertainment relating to motion pictures.
United States	ACADEMY AWARDS	1956313 2/13/1996	I 25	Sweatshirts; jackets; T-shirts; and, caps.

These marks are valid and subsisting and, as the owner of the registered marks, A.M.P.A.S. has the rights to their exclusive use. True and correct copies of the aforesaid certificates of registration are attached hereto as **Exhibit A.**

6. As a result of A.M.P.A.S.'s long involvement in the motion picture industry, extensive advertising, and media and public interest in A.M.P.A.S.'s ceremony, its A.M.P.A.S.® trademark has become famous and is associated in the public's mind with A.M.P.A.S. A.M.P.A.S. has made substantial investments in developing its reputation, which is symbolized by its valuable trademark A.M.P.A.S.®.

7. With respect to Registration No. 2166918 for the A.M.P.A.S.® mark, A.M.P.A.S. has complied with the requirements set forth in Sections 8 and 15 of the Lanham Act. A.M.P.A.S.'s exclusive right to use the mark and its registration thereof has become incontestable within the meaning of 15 U.S.C. § 1065 and said certificate of registration constitutes conclusive evidence of, inter alia, A.M.P.A.S.'s ownership of and exclusive right to use the mark.

8. In addition to the aforementioned trademark registrations, A.M.P.A.S. owns the Internet domain name <ampas.org>, which incorporates its A.M.P.A.S.® mark. Through its website at <ampas.org>, other Internet channels, and other media, A.M.P.A.S. actively advertises, promotes and uses the A.M.P.A.S.® mark to identify itself, its sponsored activities and products, its communications and related services. As a result of A.M.P.A.S.'s extensive advertisement, media attention, and long leadership of the motion picture and related industries, the A.M.P.A.S.® mark has achieved widespread and favorable acceptance and recognition, and has become an asset of substantial value throughout the United States and the world. Such goodwill would not be a valuable, prized asset if A.M.P.A.S. lost control over the ability to prevent unauthorized use of the A.M.P.A.S.® mark.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed this 13 day of August, 2007, at Beverly Hills, California.

Scott Miller

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Declaration of Scott Miller in Support of Plaintiff's Motion for a Default Judgment Transferring <AMPAS.COM> to Plaintiff was filed with the Clerk of the Court using the CM/ECF system, and that a copy was served via Federal Express and email on the registrant of the defendant domain name, which is a non-filing user, at the postal and email addresses set forth below:

Lin ZanSong
1688 RM RD.
Wenzhou, Zhejiang
China 325000
Email: master@21cn.net

this 15th day of August, 2007.

/s/

Maureen E. Carr
Virginia State Bar No. 72802
Counsel for Academy of Motion Pictures
Arts and Sciences
REES BROOME, PC
8133 Leesburg Pike, Ninth Floor
Vienna, Virginia 22182
(703) 790-1911 (phone)
(703) 790-5249 (fax)
mcarr@reesbroome.com

K:\01\01598\00001\PLDNGS\070801 declaration of scott miller in support of motion for default judgment (v2).doc

Exhibit A

Int. Cls.: 9, 16 and 41

Prior U.S. Cls.: 2, 5, 21, 22, 23, 26, 29, 36, 37, 38, 50, 100, 101 and 107

Reg. No. 2,166,9

United States Patent and Trademark Office

Registered June 23, 19

TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER

A.M.P.A.S.

ACADEMY OF MOTION PICTURE ARTS AND SCIENCES (CALIFORNIA CORPORATION)
8949 WILSHIRE BOULEVARD
BEVERLY HILLS, CA 90211

FOR: PRE-RECORDED VIDEO TAPES AND CD-ROMS FEATURING ENTERTAINMENT RELATING TO MOTION PICTURES AND AWARD CEREMONIES, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 6-0-1995; IN COMMERCE 6-0-1995.

FOR: SERIES OF NONFICTION BOOKS, PAMPHLETS AND INFORMATIONAL BROCHURES ISSUED FROM TIME TO TIME RELATING TO MOTION PICTURES AND AWARDS CEREMONIES, IN CLASS 16 (U. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

FIRST USE 0-0-1976; IN COMMERC 0-0-1976.

FOR: EDUCATIONAL AND ENTERTAI MENT SERVICES RENDERED THROUGH TH MEDIUM OF AN ANNUAL LIVE TELEVISIO PROGRAM IN THE FIELD OF MOTION PIC TURES AND AWARD CEREMONIES, I CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 0-0-1994; IN COMMERC 0-0-1994.

SER. NO. 75-180,579, FILED 10-11-1996.

CHERYL S. GOODMAN, EXAMINING ATTOR NEY

Int. Cl.: 41

Prior U.S. Cls.: 100, 101 and 107

Reg. No. 2,245,965

United States Patent and Trademark Office

Registered May 18, 1999

SERVICE MARK
PRINCIPAL REGISTER

ACADEMY AWARD

ACADEMY OF MOTION PICTURE ARTS AND SCIENCES (CALIFORNIA CORPORATION)
8949 WILSHIRE BOULEVARD
BEVERLY HILLS, CA 902111972

FOR: ENTERTAINMENT SERVICES, NAMELY, AN ANNUAL AWARD PROGRAM FOR PRESENTATION OF AWARDS IN RECOGNITION OF DISTINGUISHED ACHIEVEMENT IN THE MOTION PICTURE INDUSTRY; EDUCATIONAL SERVICES, NAMELY, PROVIDING INCENTIVES TO PERSONS TO DEMONSTRATE EXCELLENCE IN THE FIELD OF MOTION PICTURES THROUGH THE ISSUANCE OF AWARDS, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 5-16-1929; IN COMMERCE 5-19-1953.

OWNER OF U.S. REG. NOS. 1,103,859, 1,956,313 AND OTHERS.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "AWARD", APART FROM THE MARK AS SHOWN.

SEC. 2(F).

SER. NO. 75-450,797, FILED 3-16-1998.

JAMES GRIFFIN, EXAMINING ATTORNEY

Int. Cl.: 16, 41

Prior U.S. Cl.: 38, 107

Reg. No. 1,103,859

Registered Oct. 10, 1978

United States Patent and Trademark Office

TRADEMARK
SERVICE MARK
Principal Register

ACADEMY AWARDS

Academy of Motion Picture Arts and Sciences (California corporation)
8949 Wilshire Blvd.
Beverly Hills, Calif. 90211

For: BOOKS, PAMPHLETS, BROCHURES AND PRESS KITS ISSUED FROM TIME TO TIME, in CLASS 16 (U.S. CL. 38).
First use August 1928; in commerce August 1928.

For: EDUCATIONAL AND ENTERTAINMENT SERVICES RENDERED THROUGH THE MEDIUM OF AN ANNUAL LIVE, TELEVISION PROGRAM DEALING WITH MOTION PICTURES, in CLASS 41 (U.S. CL. 107).
First use May 16, 1929; in commerce Mar. 19, 1953.

Owner of Reg. No. 1,048,964.

Ser. No. 128,830, filed June 1, 1977.

HANNAH M. FISHER, Examiner

Int. Cl.: 9

Prior U.S. Cl.: 21

Reg. No. 1,880,473

United States Patent and Trademark Office Registered Feb. 28, 1995

TRADEMARK
PRINCIPAL REGISTER

ACADEMY AWARDS

ACADEMY OF MOTION PICTURE ARTS AND SCIENCES (CALIFORNIA CORPORATION)
8949 WILSHIRE BOULEVARD
BEVERLY HILLS, CA 90211

FOR: PRE-RECORDED VIDEO TAPES FEATURING ENTERTAINMENT RELATING TO MOTION PICTURES, IN CLASS 9 (U.S. CL. 21).

FIRST USE 2-1-1992; IN COMMERCE 2-1-1992.

OWNER OF U.S. REG. NO. 1,103,859.

SER. NO. 74-494,848, FILED 2-28-1994.

ELEANOR MELTZER, EXAMINING ATTORNEY

Int. Cl.: 25

Prior U.S. Cls.: 22 and 39

Reg. No. 1,956,313

United States Patent and Trademark Office

Registered Feb. 13, 1996

TRADEMARK
PRINCIPAL REGISTER

ACADEMY AWARDS

ACADEMY OF MOTION PICTURE ARTS AND SCIENCES (CALIFORNIA CORPORATION)
8949 WILSHIRE BOULEVARD
BEVERLY HILLS, CA 90211

FOR: SWEATSHIRTS; JACKETS; T-SHIRTS; AND, CAPS, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 0-0-1978; IN COMMERCE 4-0-1989.

OWNER OF U.S. REG. NO. 1,103,959.

SER. NO. 74-650,050, FILED 3-22-1995.

K. MARGARET LE, EXAMINING ATTORNEY